

IT 95-24
Tax Type: INCOME TAX
Issue: 1005 Penalty (Reasonable Cause Issue)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             )   Docket:  
      v.                    )   FEIN:  
                             )  
XXXXXX                     )  
                             )   Wendy S. Paul  
                             )   Admin. Law Judge  
      Taxpayer(s)           )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This case involves the failure to pay over to the State of Illinois withheld Illinois income taxes from compensation paid to employees of taxpayer during the 3rd calendar quarter of 1992. The Department of Revenue (hereinafter referred to as the "Department") issued a Notice of Deficiency to taxpayer. The Notice proposed tax deficiencies in the amount of \$2,212.00, exclusive of statutory interest, and penalties pursuant to 35 ILCS 5/1001, 5/1002(c)(1) and 5/1005 in the amounts of \$829.50, \$165.90 and \$240.34, respectively.

Taxpayer filed a timely Protest. In its Protest, taxpayer conceded that it had failed to file a withholding tax return and timely pay over to the Department the amounts withheld for the subject calendar quarter and included, along with its Protest, a remittance in the amount of the deficiencies and interest proposed in the Notice. Taxpayer contested only the issues of the penalties. Therefore, the sole issue to be resolved is whether the taxpayer's failure to file a withholding tax return and/or pay over to the State of Illinois income taxes withheld from compensation paid to its employees should subject taxpayer to penalties as provided by 35

ILCS 5/1001, 5/1002(c)(1) and 5/1005.

Taxpayer did not request an evidentiary hearing and, accordingly, this case will be decided based upon the Department's administrative file.

FINDINGS OF FACT:

1. The Department issued a Notice of Deficiency to taxpayer. The Notice proposed tax deficiencies in the amount of \$2,212.00, exclusive of statutory interest, and penalties pursuant to 35 ILCS 5/1001, 5/1002(c)(1) and 5/1005 in the amounts of \$829.50, \$165.90 and \$240.34, respectively. Dept. Ex. No. 1

2. In response thereto, taxpayer filed a timely Protest. In its Protest, taxpayer did not dispute its failure to file a return and/or pay the tax for the calendar quarter at issue but protested only the issues relating to penalties. Dept. Ex. No. 2

3. Along with its Protest, taxpayer enclosed a remittance in the amount of the tax deficiency and interest proposed in the Notice. Dept. Ex. No. 2

4. In its Protest, taxpayer stated that its state tax compliance manager, in the course of preparing state withholding compliance for approximately forty-five states, inadvertently overlooked remittance of the Illinois quarterly withholding required for the calendar quarter at issue, and that the oversight did not come to its attention until receipt of the Department's Notice. Taxpayer further stated that its oversight was not due to willful neglect and that it subsequently filed and remitted 4th quarter and all subsequent amounts on a timely basis. Dept. Ex. No. 2

5. For the 3rd calendar quarter of 1992, taxpayer withheld the sum of \$2,212.00 from compensation paid to its employees, but failed to file an IL-941 withholding tax return and failed to pay over the withheld fund to the Department in a timely fashion as required under Article 7 of the Illinois Income Tax Act. Dept. Ex. No. 1 and 2

CONCLUSIONS OF LAW: All employers who are required to deduct and withhold tax under the Illinois Income Tax Act must file returns and make timely payments to the Department in accordance with 35 ILCS 5/704. It is undisputed that taxpayer was such an employer and that it failed to timely file a return and make timely payment as required by statute for the subject calendar quarter.

The Notice proposed penalties pursuant to 35 ILCS 5/1001, 5/1002(c)(1) and 5/1005 and taxpayer has asked that all such penalties be abated.

Penalties imposed under 35 ILCS 5/1001 (failure to timely file a tax return) and under 35 ILCS 5/1005 (failure to timely pay the amount of tax required to be shown on the return) can be abated upon a showing of reasonable cause.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (*Rorabaugh v. United States*, 611 F. 2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (*Dumont Ventilation Company v. Department of Revenue*, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon the taxpayer to show by a preponderance of the evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The only evidence offered by taxpayer was its statement in its Protest that its lack of compliance was inadvertent and not due to willful neglect. I do not find that this, standing alone, establishes reasonable cause sufficient to abate the penalties imposed under 35 ILCS 5/1001 and 5/1005.

Similarly, taxpayer has failed to establish any basis for abatement of the penalties proposed pursuant to 35 ILCS 5/1002(c), which provides, in pertinent part:

[I]f any employer, without intent to evade or defeat any tax imposed by this Act or the payment thereof, shall fail to make a

return and pay a tax withheld by him at the time required by or under the provisions of this Act, such employer shall be liable for such taxes and shall pay the same together with interest thereon and the penalty provided in subsection(a) . . . (emphasis supplied)

Not only does the above statute fail to contain a reasonable cause exception, it explicitly covers all cases where, as here, there was a nonwillful and inadvertent failure by an employer to file a return or pay the required withholding tax.

Based on the foregoing, I recommend that the Notice of Deficiency be upheld in its entirety.

Wendy S. Paul
Administrative Law Judge

April 21, 1995